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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 ROBERT E. LEE,

11 Defendant.
12

NO. 2:15-cr-00035-JLQ

ORDER REJECTING PLEA
AGREEMENT

13 On October 2, 2015, the court held a hearing on Defendant Robert Lee's plea of
14 guilty to Theft of Government Money Over \$1,000.00, in violation of 18 U.S.C. § 641.
15 Assistant Federal Defender Jay McEntire represented Lee, who was present and not in
16 custody. Assistant U.S. Attorney Caitlin Baunsgard appeared for the Government. This
17 Order memorializes and supplements the court's oral rulings.

18 Lee pled guilty on July 17, 2015, pursuant to a Fed.R.Crim.P. 11(c)(1)(C) Plea
19 Agreement. The court accepted his plea of guilty but reserved ruling on the acceptance or
20 rejection of the Plea Agreement until after review of the Presentence Report. *See*
21 Fed.R.Crim.P. 11(c)(3)(A). The Plea Agreement provided for no incarceration and five
22 years of probation. The Plea Agreement also called for \$135,501.50 in restitution to the
23 Social Security Administration and \$304,155.00 in restitution to the Veteran's
24 Administration, although no specific restitution was provided.

25 The relevant conduct for this offense started in 1988 when Lee began collecting and
26 cashing checks from the Social Security Administration and Veteran's Administration

1 payable to his deceased mother. Lee continued receiving and cashing these checks up until
2 2015. Over the course of approximately 27 years, Lee wrongfully obtained \$439,656.50.

3 It is within the court's discretion to accept or reject a Plea Agreement. *In re*
4 *Morgan*, 506 F.3d 705, 709 (9th Cir. 2007). "[A] district court properly exercises its
5 discretion when it rejects a plea agreement calling for a sentence the court believes 'is too
6 lenient or otherwise not in the public interest' in light of the factual circumstances specific
7 to the case." *Id.* at 712 (quoting in part *Ellis v. United States District Court*, 356 F.3d
8 1198, 1209 (9th Cir. 2004) (en banc)). If the court chooses to reject the Plea Agreement, it
9 must do so in whole, rejecting the entire Plea Agreement rather than in a "piecemeal"
10 manner. *Id.* at 708-09.

11 The court considered the unique and specific factual circumstances of this case and
12 rejected the Plea Agreement *en toto*. The court has no categorical policy for or against
13 Fed.R.Crim.P. 11(c)(1)(C) Plea Agreements and has not rejected such an Agreement for at
14 least a year while accepting the many proffered 11(c)(1)(C) Agreements in cases assigned
15 to this court. In this case, the court found the Plea Agreement, calling for a term of no
16 incarceration and five years of probation, to be too lenient in light of the theft of almost
17 \$500,000 in government funds over a long period of time and a Guideline Range of
18 imprisonment of 33 to 41 months. Pursuant to Fed.R.Crim.P. 11(c)(5), the court informed
19 the parties of its rejection of the Plea Agreement. The court offered Lee the opportunity to
20 withdraw his plea of guilty, and advised him that if his plea is not withdrawn, the court
21 may dispose of this case less favorably toward Lee than the Plea Agreement contemplated.

22 Mr. McEntire requested time in order to negotiate and fashion a revised plea
23 agreement before electing whether to proceed with the plea of guilty or withdraw the plea.
24 The court specifically advise the parties and counsel that it would not engage in such
25 negotiations in any manner. The court finds the continuance request to be reasonable and
26 sets the matter for further hearing on October 13, 2015, at 10:00 a.m.

IT IS HEREBY ORDERED:

1. The Plea Agreement dated July 17, 2015 is rejected *en toto*.
2. Further hearing on this matter is set for **Tuesday, October 13, 2015, at 10:00 a.m.**

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order and furnish copies to counsel.

DATED this 5th day of October, 2015.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE